



DEMOCRATIC NATIONAL COMMITTEE

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February 25, 2008

Thomasenia P. Duncan, Esq.  
General Counsel  
Federal Election Commission  
999 E Street, S.E.  
Washington, D.C. 20463

MUR # 5976

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

2008 FEB 25 PM 2:33

Re: Complaint Against Senator John McCain and John McCain 2008  
Inc.

Dear Ms. Duncan:

Pursuant to the Commission's rules, 11 C.F.R. §111.4, the Democratic National Committee ("DNC"), 430 S. Capitol Street, S.E. Washington, D.C. 20003, files this complaint against U.S. Senator John McCain (R-Ariz.), P.O. Box 16118, Arlington, VA 22215, a candidate for the nomination of the Republican Party for President of the U.S., and John McCain 2008, Inc. (the "McCain Campaign"), P.O. Box 16118, Arlington, VA 22215, the principal campaign committee of Senator McCain for his campaign for the Presidential nomination, for violations which have occurred or are about to occur, of the Presidential Matching Payment Account Act, 26 U.S.C. §§9031 et seq. (the "Matching Payment Act"), and the Commission's regulations.

In summary, in order to obtain the Commission's certification of matching funds, Senator McCain signed a binding agreement with the Commission to accept a spending limit and the other conditions of receiving those funds. He has now announced that he is unilaterally breaking that agreement and that he intends simply to ignore and flout the law—specifically, to ignore the all legal requirements to which he agreed and that are still binding on him. As the Chairman of the Commission has already advised him, Senator McCain is not free to do that without the Commission's approval. And there is no possibility that he will obtain such approval because he has already violated a key condition for being let out of the matching funds program: he has pledged matching funds as collateral for a loan to his campaign.

**I. Factual Background**

On August 13, 2007, Senator McCain submitted his signed Candidate Agreement and Certification to the Commission, seeking certification of eligibility to receive matching funds under the Matching Payment Act. (Exhibit 1 hereto). In that Candidate Agreement and Certification letter, Senator McCain agreed to all of the provisions set forth in the Commission's rules, 11 C.F.R. §§9033.1 and 9033.2, including his express agreement that his campaign would not exceed the applicable spending limit.

On December 20, 2007, the Commission announced that it had certified Senator McCain to receive federal matching funds. (Commission News Release, Dec. 20, 2007, attached hereto as Exhibit 2). As the Commission explained in the release, to "become eligible for matching funds, candidates must raise a threshold amount" and "[o]ther requirements to be declared eligible include agreeing to an overall spending limit of approximately \$50 million, abiding by spending limits in each state, using public funds only for legitimate campaign-related expenses, keeping financial records and permitting an extensive campaign audit." Senator McCain agreed to all of these conditions in his Candidate Agreement letter.

On January 31, 2008, the McCain Campaign filed, with its year-end report, a Schedule C-1 (Exhibit 3) disclosing that the Campaign had obtained a \$4,000,000 line of credit from Fidelity & Trust Bank (the "Bank"), and had drawn \$2,971,697 of that line of credit. The loan documents consist of a Business Loan Agreement, dated as of Nov. 14, 2007 (the "Loan Agreement," attached hereto as Exhibit 4); a Commercial Security Agreement dated as of Nov. 14, 2007, between the Campaign and the Bank (the "Security Agreement," attached hereto as Exhibit 5); a Promissory Note in the principal amount of \$3 million, made by the Campaign to the Bank (the "Note"); and a Loan Modification Agreement dated Dec. 17, 2007 (the "Modification Agreement," attached hereto as Exhibit 6).

In its February 20, 2008 report, the McCain Campaign disclosed that it has expended, through January 31, 2008, approximately \$49,600,000. Since that time, almost another month has passed, during which Senator McCain has been actively campaigning and, on information and belief, has been expending considerable additional sums.

On February 6, 2007, Senator McCain sent a letter to the Commission announcing that he and his campaign are withdrawing from participation in the federal primary-election funding program established by the Matching Payment Act. On February 7, 2007, counsel for the McCain Campaign sent a letter to the U.S. Treasury announcing that the Senator and his campaign are withdrawing from the program. (Copies of the letters are attached hereto as Exhibit 7).

On February 19, 2008, Commission Chairman David Mason sent a letter to Senator McCain advising him that the Commission considers his February 6, 2008 letter

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"as a request that the Commission withdraw its previous certifications" and that just as the law "required an affirmative vote of four Commissioners to make these certifications, it requires an affirmative vote of four Commissioners to withdraw them."

## **II. Legal Analysis**

The Commission's rules, 11 C.F.R. §9033.1, require a candidate seeking to become eligible to receive primary matching fund payments "to agree in a letter signed by the candidate to the Commission" that the candidate and the candidate's campaign will comply with the legal conditions set out in that regulation. Senator McCain signed and submitted such a letter (Exhibit 1 hereto). In Advisory Opinion 2003-35, the Commission ruled that such a letter constitutes "a binding contract with the Commission," *id.* at 2, and that any request for withdraw from the matching funds program will be treated as a request, "in effect, [as to] whether the Commission would consent to a rescission of this contract. *Id.*

In that Advisory Opinion, the Commission held that as a matter of policy, the Commission would grant such consent "to withdraw a certification of a candidate's eligibility to receive Matching Payment Act funds prior to the payment date for any such funds to such candidate or his or her committee upon receipt of a written request signed by the candidate, *provided that the certification of funds has not been pledged as security for private financing.*" *Id.* at 4 (emphasis added).

In the case of Senator McCain, first, the Commission has not granted any consent to the Senator or the McCain Campaign to rescind the Senator's "binding contract with the Commission" A.O. 2003-35 at 2, *i.e.*, his Candidate Agreement and Certification letter (Exhibit 1 hereto). Therefore, as of this time, Senator McCain and the McCain Campaign are still bound by that Candidate Agreement and Certification letter and are not free to withdraw unilaterally from the matching funds program or to ignore their legal obligations under the Candidate Agreement and Certification letter.

Second, even if and when the Commission considers the Senator's and McCain Campaign's requests to withdraw, those requests should not be granted because the Senator and his Campaign have already violated one of the key conditions for granting such a request: that they not pledge the initial certification of matching funds, *i.e.*, the initial determination of eligibility to receive matching funds, as security for private financing. In fact, they have already done so.

To be sure, the Schedule C-1 filed by the Campaign indicated that the collateral pledged for the loan excludes "certification for federal matching funds" and "public financing." (Exhibit 3). The Loan Agreement (Exhibit 4) also represents, on page 4, that "any certification of matching funds eligibility currently possessed by [the Campaign] or obtained before January 1, 2008 and the right of" Senator McCain and the Campaign "to receive payment under these certifications are not collateral" for the loan. In fact,

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however, the Campaign did effectively pledge future matching funds to be received under the initial certification, as collateral for the loan, in several ways:

(1) In the Loan Agreement, under "Affirmative Covenants," a provision entitled "Additional Requirements" provides that if the McCain Campaign withdraws from the matching funds program before the end of 2007 but Senator McCain does not win the New Hampshire primary or place within 10 points of the winner, Senator McCain will continue his candidacy, reapply for public matching funds and grant to the Bank, "as additional collateral for the Loan, a first priority perfected security interest in and to" all of the Campaign's "right, title and interest to the matching fund program." Taken in combination with the fact that Senator McCain and the Campaign had already applied for and received the certification for matching funds, this provision can only be interpreted as a *present* encumbrance, however conditional, of the Campaign's *future* interest in and entitlement to matching funds, as part of the security for the line of credit.

That conclusion is reinforced by a negative covenant, appearing under "negative Covenants," on page 3 of the Loan Agreement, under the subheading "Indebtedness and Liens." In that section, the Campaign agrees that it will not, without the Bank's consent, "transfer, mortgage, assign, pledge, lease grant a security interest in or encumber" any of the Campaign's "assets, including without limitation any of Borrower's right, title or interest in and to the public matching fund program or any matching fund entitlement thereunder, whether now existing or hereafter arising...." This negative covenant clearly implies that the Bank assumes it has a perfected security interest in all future rights of the Campaign to receive matching funds under the initial determination of eligibility.

(2) The Loan Agreement also includes a provision, on page 4, entitled "Compliance with the Federal Election Commissions Matching Funds Program," in which the Campaign agrees with the Bank that, while the Loan Agreement is in effect, the Campaign "shall not exceed overall or state spending limits set forth in the Federal Matching Funds program, if applicable." The only reason for inclusion of such a provision would be to ensure that the Campaign will continue to be entitled to receive matching funds so that the Bank can treat them as part of the Collateral.

The Modification Agreement, made on December 17, 2007 (Exhibit 6), before the Senator and Campaign purported to withdraw from the matching funds program, amends that provision to make it applicable "irrespective of whether Borrower [the Campaign] is subject to such program as of any applicable date of determination." Thus, the Bank obtained a covenant from the Campaign to abide by the spending cap while the Loan Agreement is in effect regardless of whether or not the Campaign considered itself to be participating in the matching funds program. Again, the only conceivable purpose and effect of such a covenant would be to ensure that matching funds could be received and be available as collateral for the loan.

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(3) The Security Agreement (Exhibit 5), on page 1 under the provision entitled "Collateral Description," describes the collateral being pledged for the line of credit as including, generally, all "accounts, ... deposit accounts, money, other rights to payment and performance...." The next to last sentence of this description states that, "any certification of matching fund eligibility, including related rights, *currently possessed* by Grantor [the Campaign] *or obtained before January 1, 2008*, are not themselves being pledged as security...and are not themselves collateral for the indebtedness..." (emphasis added).

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The description of the collateral for the loan thus does not exclude but rather *includes*—as of the date of the Security Agreement—rights to receive matching funds that arise, *i.e.*, that come into existence, after January 1, 2008, based on matchable contributions received and presentations in good order made after that date, even without any new certification of initial eligibility under section 9033.4 of the Commission's rules. Again, then, under this language, the Campaign has made a current pledge and encumbrance of a *future rights* to receive funds under the matching funds program under and pursuant to the *initial certification* of matching payment eligibility made by the Commission in December 2007.

That conclusion is reinforced by the negative covenant appearing at the end of the Collateral Description, which provides that the Campaign "agrees not to sell, transfer, convey, pledge, hypothecate or otherwise transfer to any person or entity any of its present or future right, title and interest in and to the public matching fund program,...including related rights," without the Bank's consent. It makes no sense for the Security Agreement to include such a negative covenant unless it was intended that the Campaign is, in the Agreement, making a current pledge of future rights to receive matching funds.

Further, the Modification Agreement, made on December 14, 2007, changed the language of the exemption in the Collateral Description to exclude, from the Collateral, only those "certifications of matching funds eligibility, including related rights, *now held* by Grantor....," in place of "currently possessed by Grantor or obtained before January 1, 2008." This modification makes clear again that, although the initial *amount* certified in December 2007 may not be part of the Collateral, the Collateral *will* include *future* amounts of matching funds paid, based on *future* submissions, even though based on the initial certification of eligibility.

For these reasons, the Commission should find that the McCain Campaign and Senator McCain have pledged the certification of matching funds as security for private financing. Assuming the Commission treats the letter from Senator McCain (Exhibit 3 hereto) as a request for withdraw from the program, the Commission should deny that request.

In view of this situation, the Commission should also investigate whether the McCain Campaign has violated the reporting requirements of the Federal Election Campaign Act of 1971 as amended, 2 U.S.C. §434(b) and the Commission's rules, 11 C.F.R. § 104.3(d)(1), by inaccurately stating on the Schedule C-1 filed with the Campaign's end of year report, that the collateral for the loan does not include "certification for federal matching funds" or "public financing."

It should also be noted that, apart from the ability to obtain the loan, the McCain Campaign has obtained a material, financial benefit from the certification of eligibility for matching funds through the ability to avail itself of the automatic right of access to the ballot, in some states. In certain states, a candidate who is certified as being eligible to receive federal matching funds is entitled to be placed on the presidential primary ballot and, if the candidate has not been so certified, his or her campaign must collect signatures on petitions in the proper form and file those petitions with the appropriate authorities—at some expense to the campaign—in order to be placed on the primary ballot. *See, e.g.*, Kentucky Rev. Stat. §§118.581 & 118.591 (2008)(file a certification from the Commission of qualification for federal matching funds or file petitions signed by 5,000 registered and qualified voters); Mont. Code. Ann. §13-10-404 (2008)(qualify for federal matching funds or file petitions with signatures of 500 voters); 15 Del. Code Ann. §§3183-3184 (2008) (if candidate not eligible to receive payments from Presidential Primary Matching Payment Account, must file petition with at least 500 signatures of voters).

In any event, regardless of any future decision of the Commission, as of this time, Senator McCain and his campaign remain bound by the legal conditions to which they agreed in the Candidate Agreement and Certification, including compliance with the expenditure limitation. Yet the Senator and the Campaign have now informed the Commission that the Campaign no longer considers itself to be participating in the matching funds program (Exhibit 2), thus implying clearly that the Campaign intends to ignore and violate the conditions and requirements set forth in the Candidate Agreement and Certification letter.

Thus, Senator McCain and the McCain Campaign have violated, or are about to violate, the Matching Payment Act, 26 U.S.C. §9035, and the Commission's rules, 11 C.F.R. Parts 9033 and 9035.

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**CONCLUSION**

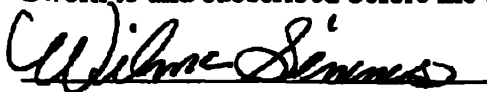
For the reasons stated above, the Commission should (1) find reason to believe, pursuant to 2 U.S.C. §437g(a)(2), that Senator John McCain and the McCain Campaign have committed, or are about to commit, a violation of Chapter 96 of Title 26 and of the Commission's rules, and should conduct an investigation; and (2) pursuant to 26 U.S.C. §9040(c), petition the appropriate U.S. District Court for injunctive relief to implement and enforce the provisions of Chapter 96 against Senator McCain and the McCain Campaign.

Respectfully submitted,



Thomas McMahon  
Executive Director

Sworn to and subscribed before me this 25 day of February 2008.



Notary Public in and for the District of Columbia

My commission expires: \_\_\_\_\_

Wilma Simms  
Notary Public, District of Columbia  
My Commission Expires 7/31/2012

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# **EXHIBIT 1**





August 13, 2007

The Honorable Robert D. Lenhard, Chairman  
Federal Election Commission  
999 E Street, NW  
Washington, D.C. 20463

Dear Chairman Lenhard:

As a candidate seeking to become eligible to receive Presidential primary matching funds, I certify and agree to the following provisions as prescribed in 11 CFR §9033.1 and 11 CFR §9033.2:

- I. In accordance with 11 CFR §9033.2(b)(1) and 11 CFR §9033.2(b)(3), I certify that I am seeking the nomination of the Republican Party for election to the Office of President in more than one State. I and/or my authorized committee(s) have received matchable contributions, which in the aggregate exceed \$5,000 from residents of each of at least twenty States, which with respect to any one person do not exceed \$250.00.
- II. Pursuant to 11 CFR §9033.2(b)(2), I and/or my authorized committee(s) have not incurred and will not incur qualified campaign expenses in excess of the expenditure limitations prescribed by 26 U.S.C. §9035 and 11 CFR §9035.
- III. In accordance with 11 CFR §9033.1(b)(1), I acknowledge that I have the burden of proving that disbursements made by me, and any of my authorized committee(s) or agents are qualified campaign expenses as defined at 11 CFR §9032.9.
- IV. Pursuant to 11 CFR §9033.1(b)(2), I and my authorized committee(s) will comply with the documentation requirements set forth in 11 CFR §9033.11.
- V. Upon the request of the Commission, I and my authorized committee(s) will supply an explanation of the connection between any disbursement made by me or my authorized committee(s) and the campaign as prescribed by 11 CFR §9033.1(b)(3).
- VI. In accordance with 11 CFR §9033.1(b)(4), I and my authorized committee(s) agree to keep and furnish to the Commission all documentation for matching fund submissions, any books, records (including bank records for all accounts) and

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supporting documentation and other information that the Commission may request.

- VII. As provided at 11 CFR §9033.1(b)(5), I and my authorized committee(s) agree to keep and furnish to the Commission all documentation relating to disbursements and receipts including any books, records (including bank records for all accounts), all documentation required by this section (including those required to be maintained under 11 CFR §9033.11), and other information that the Commission may request. If I or my authorized committee(s) maintains or uses computerized information containing any of the categories of data listed in 11 CFR §9033.12(a), the committee will provide computerized magnetic media, such as magnetic tapes or magnetic diskettes, containing the computerized information at the times specified in 11 CFR §9038.1(b)(1) that meet the requirements of 11 CFR §9033.12(b). Upon request, documentation explaining the computer system's software capabilities shall be provided and such personnel as are necessary to explain the operation of the computer system's software and the computerized information prepared or maintained by the committee(s) shall be made available.
- VIII. As prescribed at 11 CFR §9033.1(b)(6), I and my authorized committee(s) will obtain and furnish to the Commission upon request all documentation relating to funds received and disbursements made on my behalf by other political committees and organizations associated with me.
- IX. In accordance with 26 U.S.C. §9038 and 11 CFR §9033.1(b)(7), I and my authorized committee(s) shall permit an audit and an examination pursuant to 11 CFR §9038 of all receipts and disbursements, including those made by me, all authorized committee(s) and any agent or person authorized to make expenditures on my behalf or on behalf of my authorized committee(s). I and my authorized committee(s) shall also provide any material required in connection with an audit, investigation, or examination conducted pursuant to 11 CFR §9039. I and my authorized committee(s) shall facilitate the audit by making available in one central location, office space, records and such personnel as are necessary to conduct the audit and examination, and shall pay any amounts required to be repaid under 11 CFR §9038 and 11 CFR §9039.
- X. Pursuant to 11 CFR §9033.1(b)(8), the person listed below is entitled to receive matching fund payments on my behalf, which will be deposited into the listed depository, which I have designated as the campaign depository. Any change in the information required by this paragraph shall not be effective until submitted to the Commission in a letter signed by me or the Treasurer of my authorized principal campaign committee.

Name of Person: Joseph Schmuckler, Treasurer, John McCain 2008

Mailing Address: P.O. Box 16118, Arlington, Virginia 22215

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**Designated  
Depository:**

**BB&T**

**Address:**

**1909 K Street, NW  
Washington, DC 20006**

- XI. Pursuant to 11 CFR §9033.1(b)(9), 11 CFR §9033.1(b)(10), and 11 CFR §9033.1(b)(11), I and my authorized committee(s) will: (A) prepare matching fund submissions in accordance with the Federal Election Commission's Guideline for Presentation in Good Order, including the provision of any magnetic media pertaining to the matching fund submissions and which conforms to the requirements specified at 11 CFR §9033.12; (B) comply with the applicable requirements of 2 U.S.C. §431 *et seq.* 26 U.S.C. §9031 *et seq.* and the Commission's regulations at 11 CFR Parts 100-300, and 9031-9039; (C) pay any civil penalties included in a conciliation agreement or otherwise imposed under 2 U.S.C. §437g against myself, any of my authorized committee(s) or any agent thereof.**
- XII. Pursuant to 11 CFR §9033.1(b)(12), any television commercial prepared or distributed by me or my authorized committee(s) will be prepared in a manner which ensures that the commercial contains or is accompanied by closed captioning of the oral content of the commercial to be broadcast in line 21 of the vertical blanking interval, or is capable of being viewed by deaf and hearing impaired individuals via any comparable successor technology to line 21 of the vertical blanking interval.**

**Signed:**

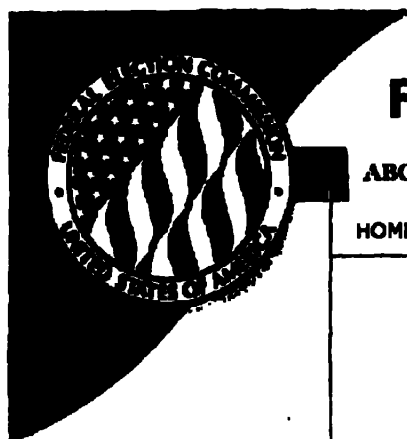
  
Candidate Signature\*

**\* 11 CFR §9033.2(a)(1) requires the Candidate and Committee Agreements and Certifications to be signed by the Candidate.**

**cc: The Honorable David M. Mason  
Vice Chairman  
Federal Election Commission**

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# **EXHIBIT 2**



# FEDERAL ELECTION COMMISSION

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For Immediate Release  
December 20, 2007

Contact: Bob Biersack  
George  
Smaragdis  
Michelle Ryan

### FEC Approves Matching Funds for 2008 Candidates

WASHINGTON – The Federal Election Commission (FEC/the Commission) has certified \$19,287,504.65 in federal matching funds to seven Presidential candidates for the 2008 election. These totals reflect contributions submitted by qualified candidates (including their initial threshold submissions) through December. Additional contributions may be submitted for certification on a monthly basis.

By comparison, in 2004 the first matching fund payments totaled \$15,417,353.84 to six candidates; in 2000, the first matching fund payments went to eight candidates, totaling \$34,019,496.24; in 1996, 10 candidates received \$37,353,967.40; in 1992, eight candidates received \$6,372,788.31; in 1988, 12 candidates received a total of \$28,748,261.05; in 1984, \$7,771,960.41 was paid to six candidates; in 1980, \$1,944,055.92 was paid to three candidates; and in 1976, 11 candidates received \$1,880,502.21.

The following chart lists the amount certified to each candidate.

Candidate	Certification
Joseph Biden	\$857,188.89
Christopher Dodd	\$1,447,568.09
John Edwards	\$8,825,424.82
Duncan Hunter	\$100,000
Dennis Kucinich	\$100,000
John McCain	\$5,812,197.35
Thomas Tancredo	\$2,145,125.50

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To become eligible for matching funds, candidates must raise a threshold amount of \$100,000 by collecting \$5,000 in 20 different states in amounts no greater than \$250 from any individual. Other requirements to be declared eligible include agreeing to an overall spending limit of approximately \$50 million, abiding by spending limits in each state, using public funds only for legitimate campaign-related expenses, keeping financial records and permitting an extensive campaign audit.

Candidates may submit requests for funds once each month. The Commission will certify an amount to be paid by the U.S. Treasury the following month. Only contributions from individuals in amounts of no more than \$250 are matchable. Following the primary season, candidates may be entitled to receive additional matching funds to assist in winding down their campaigns or to retire debts. The maximum amount a candidate could receive is currently estimated to be about \$21 million.

The U.S. Treasury Department may pay the FEC-certified amounts beginning in January 2008. Treasury Department regulations require that funds for the convention and general election grants be set aside before any matching fund payments are made. Information provided by the Treasury Department shows the balance in the fund as of November 30, 2007 was \$166,233,140 and the Commission has estimated that no funds will be available for matching payments in January 2008. As deposits are made from tax returns in the early months of 2008, matching fund payments will be made from those deposits until all certified amounts have been paid. Based on historical patterns, the FEC estimates that funds may not be available to disburse before March 2008.

The Presidential public funding program is financed through the \$3 check-off that appears on individual income tax returns. The program has three elements: grants to parties to help fund their nominating conventions, grants available to nominees to pay for the general election campaign, and matching payments to participating candidates during the primary campaign.

In June of this year the Commission certified \$16,356,000 each to the Democratic and Republican parties for their conventions. The Commission estimates that each general election nominee will be eligible for a grant of approximately \$85 million.

*The Federal Election Commission (FEC) is an independent regulatory agency that administers and enforces federal campaign finance laws. The FEC has jurisdiction over the financing of campaigns for the U.S. House, the U.S. Senate, the Presidency and the Vice Presidency. Established in 1975, the FEC is composed of six Commissioners who are nominated by the President and*

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# **EXHIBIT 3**

# SCHEDULE C-1

## LOANS AND LINES OF CREDIT FROM LENDING INSTITUTIONS

Federal Election Commission, Washington, D.C. 20463

Supplementary for  
Statement found on  
Schedule C  
RECEIVED  
FEC MAIL CENTER  
JAN 31 AM 11:28  
IDENTIFICATION NUMBER  
2800430470

Name of Committee (In Full)

JOHN MCCAIN 2008, INC.

Bank Ref ID: SC-01

LENDING INSTITUTION (LENDER)

Full Name

FIDELITY & TRUST BANK

Amount of Loan

4000000.00

Interest Rate (APR)

8.5000 %

Mailing Address

4831 CONDELL AVE.

Date Incurred or Established

11 14 2007

City

BETHESDA

State

MD

Zip Code

20814-8814

Date Due

05/14/2008

A. Has loan been restructured?

☒ No ☐ Yes

If yes, date originally incurred :

B. If line of credit,

Amount of this Draw:

2971897.20

Total

Outstanding  
balance :

2971897.20

C. Are other parties secondarily liable for the debt incurred?

☒ No ☐ Yes

(Endorsers and guarantors must be reported on Sch. C)

D. Are any of the following pledged as collateral for the loan: real estate, personal property, goods, negotiable instruments, certificates of deposit, chattel papers, stocks, accounts receivable, cash on deposit, or other similar traditional collateral?

☐ No ☒ Yes If yes, specify:

ALL ASSETS OF ANY KIND OR AMT EXCLUDING CERTIFICATIONS  
FOR FEDERAL MATCHING FUNDS: EST. \$88,000,000

What is the value of this collateral?

5000000.00

Does the lender have a perfected security  
interest in it? ☐ No ☒ Yes

E. Are any future contributions or future receipts of interest income, pledged as  
collateral for the loan? ☐ No ☒ Yes If yes, specify:

ALL FUTURE INCOME EXCEPT PUBLIC FINANCING: ESTIMATED IN  
EXCESS OF \$8,000,000

What is the estimated value?

5000000.00

A depository account must be established pursuant  
to 11 CFR 100.82 and 100.142.

Date account established:

12 10 2007

Location of account

FIDELITY & TRUST BANK

Address:

4831 CONDELL AVE.

City, State, Zip: BETHESDA

MD 20814-8814

F. If neither of the types of collateral described above was pledged for this loan, or if the amount pledged does not equal or exceed  
the loan amount, state the basis upon which this loan was made and the basis on which it assures repayment.

G. COMMITTEE TREASURER

Typed Name

MR SALVATORE PURPURA (ASSISTANT TREASURER)

Signature

DATE

01 29 2008

H. Attach a signed copy of the loan agreement.

I. TO BE SIGNED BY THE LENDING INSTITUTION:

I. To the best of this institution's knowledge, the terms of the loan and other information regarding the extension of this loan  
are accurate as stated above.

II. The loan was made on terms and conditions (including interest rate) no more favorable at the time than those imposed for  
similar extensions of credit to other borrowers of comparable credit worthiness.

III. This institution is aware of the requirement that a loan must be made on a basis which assures repayment, and has complied  
with the requirements set forth at 11 CFR 100.82 and 100.142 in making this loan.

AUTHORIZED REPRESENTATIVE

Typed Name

MR JOHN RICHARDSON

Signature

Title

SENIOR VP

DATE

01 29 2008

FE10008.DCF

FEC Schedule C-1 ( Form 3P )

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# EXHIBIT 4





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Cash, checks, money orders, etc. deposited or caused to be deposited into one or more of the depository accounts established by Employer on Employer's behalf, all checks, drafts, notes and other instruments received by Employer, including without limitation, contribution payments, within one (1) business day of Employer's receipt thereof. Funding each deposit, however old and comprising any such form of payment with any of its characteristics or property, but will hold those deposits and spent.

**ASSIGNMENT REPRESENTATIONS.** If any claim or proceeding is commenced that would adversely affect Lender's interest in the Collateral or if Borrower fails to comply with any provision of this Agreement or any Related Document, including but not limited to Borrower's failure to discharge or pay when due any indebtedness incurred or guaranteed by Borrower, or pay when due any Related Document, Liability on Borrower's behalf may, and shall not be deemed to, take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, fees, penalties, interests, commitment and other charges, at any time before or based on any Collateral and paying all costs for attorneys, consultants and providing any Collateral. As such expenditures incurred or paid by Lender for such purposes will then form interest of the debt charged under the Note from the date incurred or paid by Lender to the date of repayment by Borrower. All such expenses will become a part of the indebtedness owed, at Lender's option, and (A) be payable on demand, or (B) be added to the balance of the Note and be repaid on demand and be payable with any installment payments to become due during either (1) the term of any applicable interest rate period, or (2) the remaining term of the Note.

**Indebtedness and Liens.** (1) Except for trade debt incurred in the normal course of business and indebtedness to Lender outstanding by this Agreement, credit, loan or money indebtedness (including interest), including capital loans, (2) except with respect to Personal Liens, car, trailer, mortgage, home, phone, loans, grant a security interest in, or conveyance of any of Borrower's assets, including, without limitation, any of Borrower's right, title or interest in and to the public utility land program or any existing land settlement transaction, whether now existing or hereafter created, or (3) and will secure any of Borrower's accounts, except to Lender.

**Continuity of Operations.** (1) Except in any business activities substantially different than those in which Borrower is presently engaged, no assets, equipment, facilities, designs, licenses, contracts or agreements with any other entity, clients or customers, contracts or orders or any other contracts or orders of the ordinary course of business, or (2) pay any dividends on Borrower's stock (other than stock dividends payable in the stock), provided, however that notwithstanding the foregoing, but only so long as no Board of Robert has declared and is continuing to would result from the payment of dividends, if Borrower is a "Subchapter S Corporation" (as defined in the Internal Revenue Code of 1986, as amended), Borrower may pay cash dividends on its stock to its shareholders from time to time in amounts necessary to enable the shareholders to pay income taxes and make estimated income tax payments to satisfy their liabilities under federal and state law which arise solely from their status as shareholders of a Subchapter S Corporation because of their ownership of shares of Borrower's stock, or payments on any of Borrower's outstanding shares or other to amend Borrower's capital structure.

**Loans, Amortization and Guarantees.** (1) Loans, based in or advance money or assets to any other person, enterprise or entity, (2) produce, create or acquire any interest in any other enterprise or entity, or (3) incur any obligation on behalf of particular other than in the ordinary course of business.

**Agreements.** Borrower will not enter into any agreement involving any provision which would be violated or breached by the performance of Borrower's obligations under the Agreement or its successor loans.

**Limitation on Advances.** Loans under or pursuant to the outstanding principal balance of the Loan is secured One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00) at any time prior to the date on which Borrower shall have fully performed and satisfied its obligations set forth herein under the term of the Funding Pool Closing Documents.

**COVENANT OF ASSIGNMENT.** If Lender has made any commitment to make any Loan to Borrower, whether under this Agreement or under any other agreement, Lender shall have no obligation to make Loan Advances or to disbursed Loan proceeds if: (A) Borrower or any Guarantor is in default under the terms of this Agreement or any of its Related Documents or any other agreement that Borrower or any Guarantor has with Lender; (B) Borrower or any Guarantor did, or is engaged in, fraudulent or deceptive practices, or is engaged in a business; (C) there occurs a material adverse change in Borrower's financial condition, or the financial condition of any Guarantor, or in the value of any Collateral securing any Loan; or (D) any Guarantor ceases, declines or attempts to file, refile or seeks such Guarantor's guaranty of the Loan or any other term of this Agreement. Lender is not bound by any limitation, term, condition or period of time that may be stated.

**release OF RECEIPTS.** To the extent permitted by applicable law, Lender reserves a right of offset in all Borrower's accounts with Lender (whether checking, savings, or notes or other accounts). This includes all accounts Borrower holds jointly with Lender's other spouse and all accounts Borrower may open in the future. However, this does not include any IRA or Roth account, or any trust accounts for which offset would be prohibited by law. Therefore, notwithstanding Lender, to the extent permitted by applicable law, to change or cancel all items owing on the transactions specified any and all such accounts, not, at Lender's option, to automatically freeze all such accounts to allow Lender to protect Lender's change and offset rights provided in this paragraph.

**DEFAULT:** Each of the following shall constitute an Event of Default under this Agreement:

**Payment Method:** Borrower fails to make any payment when due under the Loan.

**Other Documents.** However this is comply with or to perform any other laws, obligations, covenant or condition contained in this Agreement or in any of the Related Documents or to comply with or to perform any laws, obligations, covenant or condition contained in any other agreement between **Locker and Rometec**.

**Default is Force of Third Parties.** Borrower or any Guarantor defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may lawfully assert, any of Borrower's or any Guarantor's property or Borrower's or any Guarantor's ability to repay the Loans or perform their respective obligations under this Agreement or any of the related financial instruments.

**False Statements.** Any generally, representation or statement made or furnished to Lender by Borrower or an Obligor's initial under this Agreement and the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

**Insolvency.** The distribution of insolvent's of Ramsey's substance as a going business, or a liquidation of insolvency is applied for Ramsey or for all or a substantial portion of the assets of Ramsey, or Ramsey makes a general assignment for the benefit of Ramsey's creditors, or Ramsey files for bankruptcy, or on insolvency bankruptcy petition is filed against Ramsey and such insolvency action results in liquidation for any 100 days.

**Defective Counterfeiting.** This Agreement or any of the Financing Documents ceases to be in full force and effect (including failure of any collateral document) to create a valid and perfected security interest (or lien) at any time and for any reason.

**Creditor or Fidelity Proceedings.** Commencement of foreclosure or fiduciary proceedings, whether by judicial proceeding, self-help, repossession or by any method, by any creditor of Borrower or by any governmental agency entitled any collateral securing the Loan. This includes a commencement of any of Borrower's accounts, including credit accounts, with Lender. However, the filing of Default shall not apply if there is a good faith dispute by Borrower as to the validity or enforceability of the debt which is the basis of the creditor or fiduciary proceeding and if Borrower gives Lender written notice of the creditor or fiduciary proceeding and deposits with Lender within 10 (ten) days of the creditor or fiduciary proceeding, in an amount determined by Lender, in the sole discretion, as being an adequate reserve or bond for the dispute.

**Event's All-Seeing Committee.** Any act the governing council engages with respect to any Committee of any of the Institutions or any Committee that or becomes compromised, or otherwise or deprives the utility of, or ability under, any Committee of the Institutions. In the event of a death, leaving, or the option, may, but shall not be required to, provide the Committee's advice to ensure unconditionally the obligations arising under the agreement is a primary responsibility to London and, in doing so, can use Board of Directors.

**Change in Ownership.** Any change in ownership of twenty-five percent (25%) or more of the common stock of Sonotek.

**Advance Change.** A material advance change occurs in Borrower's financial condition, or Lender between the proposed or performance of the Loan is terminated.

### Inventory: Lender's card (20) before 10/1/1999

**EFFECT OF AN EVENT OF DEFAULT.** If any Event of Default shall occur, except where otherwise provided in this Agreement or the Related Documents, all commitments and obligations of Lender under this Agreement or the Related Documents or any other agreement immediately will terminate (including any obligation to make further loan advances or disbursements, and, at Lender's option, all other money in connection with the Loans, including all prepayments, interest, and all other fees, costs and charges). If any such Event immediately does and results in, or would result in, any (i) to (viii) to be foreclosed, except that in the case of an Event of Default of the type described in the "foreclosure" subsection above, such foreclosure shall be automatic and not optional, or (ii) to (viii), Lender shall have all the rights and remedies provided in the Related Documents or available at law, in equity, or otherwise. Except as may be prohibited by applicable law, all of Lender's rights and remedies shall be cumulative and may be exercised concurrently or successively. Nothing in this Section is intended to prevent any remedy that will result in payment of any other amounts, and no action to enforce any obligation or to take action to prevent an obligation of Borrower or any Guarantor shall not affect Lender's right to declare a Default and to exercise its rights and remedies.

**COMPLIANCE WITH THE FEDERAL ELECTION CAMPAIGN ACTING FUNDS PROGRAM.** Campaign agrees and covenants with Lender that while this Agreement is in effect, Campaign shall not exceed overall or state spending limits set forth in the Federal Matching Funds Program, if applicable.

**POST CLOSING DOCUMENTS.** Within sixty (60) days from the date of this Agreement, Borrower hereby agrees to deliver to Lender, the Assignment of Life Insurance Policy (the "Assignment") and a copy of the Republic Life Insurance Policy (the "Policy"), to the use of John McCain, in an amount not less than \$1,000,000.00. Borrower understands and agrees that failure to deliver the Policy and the Assignment within the period specified will, at the option of the Lender, constitute an event of default.

**STATUS OF CURRENTLY HELD INFORMATION OF MATTHEW PERIN.** Bureau and Lenoir agree that any violations of existing laws currently possessed by Bureau is obtained before January 1, 1980 and the right of John McCallin 1980, Inc. and John McCallin to receive payment under their contract was not obtained under the Economic Espionage Statute enacted by the Law.

**MISCELLANEOUS FINDINGS.** The following abnormalities were seen on a panel of 100 specimens:

**Amendments:** This Agreement, together with any United States, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration or amendment to this Agreement shall be effective unless given in writing and signed by the state or states sought to be altered or bound by the alteration or amendment.

**Advertiser's Patent Obligations.** Insofar as possible, Licensor shall not attempt to fully enforce this Agreement. However, if any third party infringes upon Licensor's patent rights, Licensor shall, at its sole discretion, enforce its patent rights against the third party. Licensor shall not be liable for any damages or costs incurred by Licensee in connection with its enforcement of its patent rights.

**Capital Headings.** Capital headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

**Consent to Jurisdiction.** Borrower hereby submits to the jurisdiction of any state or federal court sitting in the State of Maryland over any suit, action, or proceeding arising out of or relating to this Agreement. Borrower hereby waives, in the fullest extent permitted by law, any objection that Borrower may now or hereafter have to the venue or venue of any such suit, action, or proceeding brought in any such court and any claim that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum. This consent to any such suit, action, or proceeding brought in any such court shall be conclusive and binding upon Borrower and may be enforced in any court in which Borrower is subject to jurisdiction by a court upon such judgment provided that venue of process is effected upon Borrower as provided in this Agreement or as otherwise provided by applicable law.

**Consent to Loan Participation.** Borrower agrees and warrants to Lender's sole or transfer, whether now or later, of one or more participation interests in the Loan to one or more purchasers, whether related or unrelated to Lender. Lender may purchase, without any limitation whatsoever, in any one or more purchases, or partial purchases, any information or knowledge Lender may have about Borrower or about any other entity relating to the Loan, and Borrower hereby agrees any claim or defense of Borrower may have with respect to such matters. Borrower absolutely waives any and all claims of title of participation interests, as well as all claims of any type of ownership of such participation interests. Borrower also agrees that the purchase of any such participation interests will be conditioned on the absolute release of such interests in the Loan and will form all of the rights created under the contract. Borrower or its successors or assigns hereby agrees to the sale of such participation interests. Borrower further agrees, at all times of sale or assignment, that it only has any of its interest in the Loan or portion of such a participation interest and unconditionally agrees that other Lender or third parties may have. Borrower warrants, under the Loan documentation of the Sale or assignment of any portion of any interest in the Loan. Borrower further agrees that the purchase of any such participation interests may entitle its interest in the Loan to one or more claims or defenses that Borrower now has against Lender.

**Governing Law.** This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Maryland without regard to its conflicts of law provisions. This Agreement has been developed by Lender in the State of Maryland.

**State of Texas. If there is a default, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of Montgomery County, State of Texas.**

JERRY WENGER, LINDERER AND SCHWENKER EACH HERETOY WOULD THAT BY JULY 21, 1957 ACTION ON PROCEEDINGS TO RETURN LINDERER OR SCHWENKER MAY BE TAKEN. ACCORDING TO ONE OF THE NEW PAPERSTHAT IS THE AGREEMENT. IT IS AGREED THAT THE WENGER CONSTITUTES A VIOLATION OF THE LAW OF ALL OF THE STATES AND OF ALL STATES TO SUCH EXTENT AS PROCEEDINGS. THE WENGER IS HERETOBY, HERETOBY, AND VOLUNTARILY MADE BY LINDERER AND SCHWENKER, AND LINDERER AND SCHWENKER EACH HERETOBY AGREE THAT THE REPRESENTATIONS OF THAT ON OFFICIALS HAVE BEEN MADE BY JERRY WENGER, TO LINDERER, THE WENGER IN 1957, IN JULY 21, 1957, IN JULY 21, 1957, IN JULY 21, 1957, SCHWENKER PARTNER REPRESENTATIVE THAT SCHWENKER HAS BEEN REPRESENTED IN THE COURSE OF THE AGREEMENT, AND IN THE MANNER OF THE WENGER OF REPRESENTATIVE LINDERER. SCHWENKER, LINDERER, AND SCHWENKER EACH HERETOBY AGREE THAT SCHWENKER HAS THE OPPORTUNITY TO RETURN THE WENGER FROM SCHWENKER.

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**Notes Imposition.** Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute a binding precedent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Notwithstanding, any notice required to be given under this Agreement shall be given in writing, and shall be effective unless actually delivered, if hand delivered, when delivery is required by law; or if delivery is required by law, when delivered with a delivery receipt or acknowledgment of receipt, or if mailed, when deposited in the United States mail, or if delivered, certified or registered mail or postage prepaid, directed to the addressee above and the Secretary of the Association. Any subsequent change in address for notices under this Agreement by giving notice in writing to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, delivery is required to keep records of all notices of all parties to the Association. Notices otherwise provided or required by law, if there is more than one document, any notice given by law to any document is deemed to be notice given to all documents.

**Severability:** If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any person(s), then such finding shall not render the remaining provisions illegal, invalid, or unenforceable as to any other person(s). If, however, the enforcing provision that is determined to be illegal, invalid, or unenforceable is the only provision that applies to an individual, then the entire Agreement shall be deemed null and void as to that individual. If the enforcing provision cannot be so severed, then the entire Agreement shall be deemed null and void as to all persons. Unless otherwise specified by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

**Substitution and Assignment of Borrowers.** To the extent the content of any provision of this Agreement contains or contemplates, including without limitation any representations, warranty or covenant, the word "Borrower" as used in this Agreement shall include all of Borrower's subsidiaries and affiliates. Notwithstanding the foregoing, under no circumstances shall this Agreement be construed to require Lender to make any Loan or other financial accommodation to any of Borrower's subsidiaries or affiliates.

**Survivability and Assigns.** All covenants and agreements by or on behalf of Ramsey contained in this Agreement or any Related Documents shall bind Ramsey's successors and assigns and shall have the benefit of Crampton and its successors and assigns. Nevertheless, however, the debt is subject to Ramsey's debt under this Agreement or any Related Documents, subject to the senior lien interest of J. Lecher.

**Survival of Representations and Warranties.** **Buyer** warrants and agrees that in entering into this Agreement, **Leader** is relying on all representations, warranties, and covenants made by **Buyer** in this Agreement or in any contracts or other instrument submitted to **Buyer** by **Leader** under the Agreement or the Related Documents. **Buyer** further agrees that regardless of any representations made by **Leader** or any documents, representations, warranties and covenants that provide the definition of **Loan Advances** and delivery to **Leader** of the Related Documents, shall be controlling in return, shall be deemed made and relied by **Buyer** at the time with **Loan Advances** is made, and shall remain in full force and effect until such time as **Buyer's** obligations shall be paid in full, or until this Agreement shall be terminated in the manner provided above, whichever is the last to occur.

**Time is of the Essence. Time is of the essence in the performance of this Agreement.**

**DEFINITIONS.** The following capitalized words and terms shall have the following meanings when used in this Agreement: Unless specifically stated to the contrary, all references to other contracts shall mean contracts in lawful commerce of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular in all related any context. Words and terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code. Acronyms, words and terms not otherwise defined in this Agreement shall have the meanings assigned to them in publications with generally accepted meanings published as in effect on the date of the Agreement.

**Advisors:** The word "Advisors" means a disponent of Loan funds made, or to be made, in Germany or on Germany's behalf on a line of credit or similar advance made under the terms and conditions of this Agreement.

**Agreement.** The word "Agreement" means the Southern Loan Agreement, as the Southern Loan Agreement may be amended or modified from time to time, together with all exhibits and attachments attached to the Southern Loan Agreement from time to time.

**Disclaimer:** The word "Disclaimer" means John McCain 2008, Inc. and includes all co-signers and co-signatures signing this Notice and all their successors and assigns.

**Colloquium.** The word "Colloquium" means all property and assets owned or obtained jointly by a Lender, whether real or personal property, whether granted directly or indirectly, whether granted now or in the future, and whether granted in the form of a security interest, mortgage, collateral mortgage, deed of trust, instrument, pledge, sale, lease, chattel mortgage, different chattel mortgage, chattel bill, loan, bill, promissory note, conditional sale, bill receipt, bill, receipt, bill of sale or other instrument, lease of equipment situated on a family estate, or any other security or lien interest whatsoever, whether created by law, contract, or otherwise. It is expressly understood and agreed that "Colloquium" includes but is not limited to policies and benefits payable or payable by insurance or otherwise before January 1, 1986.

**Environmental Laws.** The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq., ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-469 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 5105, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

**Event of Default:** The words "Event of Default" mean any of the events of default set forth in this Agreement in the default section of this Agreement.

**NOTE:** The word "BAC" means sexually abused, sexually exploited.

Greener: The word "thinker" means each and all of the persons or entities granting a Security Interest in any Collateral for the Loans, and their associated successors, assigns and heirs.

**Disclaimer:** The word "Traveler" means any customer, user, or accommodation party of any or all of the Lines.

**Comments:** The word "Security" derives its meaning from "Security" in Latin, including without limitation a guarantee of safety or one of the state.

**Vigorous Substances.** The words "Vigorous Substances" cover materials that, because of their quality, concentration or physical, chemical or functional characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, handled, stored, disposed of, processed, manufactured, transported or otherwise handled. The words "Vigorous Substances" are used in their very broadest sense and include without limitation any acid or base, or toxic substance, material or waste as defined by or listed under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA). The term "Vigorous Substances" also includes, without limitation, pesticides and pesticides by-products or any flammable, corrosive or oxidizing.

**Indebtedness.** The word "Indebtedness" means the indebtedness evidenced by the Note or Notes of Borrower, including all principal and interest payable with all other indebtedness and costs and expenses for which Borrower is responsible under this Agreement or under any of the related documents.

**Leander.** The word "leander" means *fatally & thus dead*. It was common and common

**Notes.** The word "least" means any and all least and should encompass both Least to Greatest whether now or heretofore existing, and hereby addressed, including without limitation those least and should encompassing identified leasts or identified on any other or website obtained in the Government from less to least.

**Warning:** The word "Title" means the Title created by John McElain 2001, Inc. in the principal amount of \$1,000,000.00 dated November 14, 2007, consisting only of contributions of real property, equipment, and vehicles for the sale or lease agreement.

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with respect to the net value of Borrower's assets. It is expressly understood and agreed that any lien, claim or encumbrance on all or any portion of Borrower's 401(k) plan or IRAs and in the public pension fund programs or any existing and collected thereunder, whether now existing or hereafter arising, shall not constitute a "Permitted Lien".

**Permitted Encumbrances.** The words "Permitted Encumbrances" mean all monetary notes, credit agreements, lease agreements, contractual agreements, guarantees, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Loan.

**Security Agreements.** The words "Security Agreements" mean and include without limitation any agreements, pledges, assignments, assignments, assignments or other agreements, whether created by law, contract, or otherwise, pledging, granting, representing, or creating a Security Interest.

**Security Interest.** The words "Security Interest" mean, without limitation, any and all types of collateral security, present and future, whether in the form of a lien, charge, assignment, mortgage, deed of trust, security deed, assignment, pledge, crop pledge, chattel mortgage, collateral chattel mortgage, chattel loan, trust's lien, conditional sale, conditional sale, trust mortgage, lien or the retention, mortgage, lease or assignment intended to be a security device, or any other security or lien interest whatsoever whether created by law, contract, or otherwise.

**BORROWER AGREES, KNOWS AND UNDERSTANDS THAT HE HAS READ ALL THE PROVISIONS OF THE BUSINESS LOAN AGREEMENT AND HEREBY AGREES TO ITS TERMS. THIS BUSINESS LOAN AGREEMENT IS DATED NOVEMBER 14, 2008.**

**THIS AGREEMENT IS GIVEN WITHOUT COAL AND IT IS UNDERSTOOD THAT THIS AGREEMENT IS AND SHALL CONSTITUTE AND HAVE THE EFFECT OF A SEALED INSTRUMENT ACCORDING TO LAW.**

**SIGNATURES:**

**JOHN MORRIS SMITH, JR.**

  
JOHN MORRIS SMITH, JR.  
Borrower

**LENDER**

**FIDELITY & TRUST BANK**

  
By \_\_\_\_\_  
Authorized Signer

\_\_\_\_\_  
Witnessing the signing of this instrument, the undersigned, as a Notary Public in and for the State of North Carolina, do hereby certify that the foregoing is a true and correct copy of the original instrument as the same appears from the records of the Notary Public in and for the State of North Carolina.

# **EXHIBIT 5**





the Calboard, and no agreement shall have been made under which any deduction or discount may be claimed concerning the Calboard except those claimed by Lender's office.

**Location of the Calboard.** Except in the ordinary course of Greater's business, Greater agrees to keep the Calboard (or in the event the Calboard consists of multiple property such as accounts or personal belongings, the records concerning the Calboard) at Greater's address shown above or at such other location as is acceptable to Lender. Upon Lender's request, Greater will deliver to Lender in time satisfactory to Lender a schedule of real property and Calboard location relating to Greater's operations, including without limitation the following: (1) all real property Greater owns or is purchasing; (2) all real property Greater is leasing or holding; (3) all changes affecting Greater's name, which, address, or name; and (4) all other properties where Calboard is or may be located.

**Recovery of the Calboard.** Except in the ordinary course of Greater's business, including the sale of inventory, Greater shall not remove the Calboard from its existing location without Lender's prior written consent. To the extent that the Calboard consists of vehicles, or other titled property, Greater shall not take or permit any action which would require application for certificate of title for the vehicle outside the State of Missouri, without Lender's prior written consent. Greater shall, whenever requested, deliver to Lender the exact location of the Calboard.

**Transactions Involving Calboard.** Except for inventory sold or otherwise collected in the ordinary course of Greater's business, or as otherwise provided for in this Agreement, Greater shall not sell, offer to sell, or otherwise transfer or dispose of the Calboard. While Greater is not in default under this Agreement, Greater may sell inventory, but only in the ordinary course of its business and only to persons who qualify as a buyer in the ordinary course of business. A sale in the ordinary course of Greater's business does not constitute a transfer in particular that constitutes a debt or any title sale. Greater shall not pledge, mortgage, encumber or otherwise permit the Calboard to be subject to any lien, security interest, assignment, or charge, other than the security interest provided for in this Agreement, without the prior written consent of Lender. This includes security interests even if junior in right to the security interests created under this Agreement. Unless waived by Lender, all proceeds from any disposition of the Calboard (or whatever manner that is held in trust for Lender) shall not be commingled with any other funds provided however, this requirement shall not constitute consent by Lender to any sale or other disposition. Upon receipt, Greater shall immediately deliver any such proceeds to Lender.

**Title.** Greater represents and warrants to Lender that Greater holds good and marketable title to the Calboard, free and clear of all liens and encumbrances except for the lien of this Agreement. No financing statement covering any of the Calboard is on file in any public office other than those which reflect the security interest created by this Agreement or to which Lender has specifically consented. Greater shall defend Lender's rights in the Calboard against the claims and demands of all other persons.

**Repairs and Maintenance.** Greater agrees to keep and maintain, and to cause others to keep and maintain, the Calboard in good order, repair and condition of all parts with this Agreement's standard in effect. Greater further agrees to pay when due all claims for work done on, or services rendered or materials furnished in connection with the Calboard as that on item or circumstances may occur which is or is not against the Calboard.

**Inspection of Calboard.** Lender and Lender's designated representatives and agents shall have the right at all reasonable times to examine and inspect the Calboard whenever located.

**Taxes, Assessments and Liens.** Greater will pay when due all taxes, assessments and fees upon the Calboard, its use or operation, upon this Agreement, upon any ancillary sale or action affecting the Calboard, or upon any of the other related documents. Greater may withhold any such payment or any debt to another party if Greater is in good faith concluding an appropriate proceeding to contest the obligation to pay and as long as Lender's interest in the Calboard is not prejudiced in Lender's sole opinion. If the Calboard is subjected to a lien which is not an encumbrance within 120 days, Greater shall demand that Lender seek, at Lender's expense, every legal and other remedy available to Lender in an attempt to provide for the discharge of the lien plus any interest, costs, reasonable attorney's fees or other charges that shall accrue as a result of foreclosure or sale of the Calboard. In any contest Greater shall defend itself and Lender and shall satisfy any such charges judgment before settlement of the Calboard. Greater shall agree Lender as an additional charge under any such legal proceeding in the contest proceedings. Greater further agrees to defend Lender and maintain that such taxes, assessments and fees, and governmental and other charges have been paid in full and in a timely manner. Greater may withhold any such payment or any debt to another party if Greater is in good faith concluding an appropriate proceeding to contest the obligation to pay and as long as Lender's interest in the Calboard is not prejudiced.

**Compliance with Governmental Requirements.** Greater shall comply promptly with all laws, ordinances, rules and regulations of all governmental authorities, past or present in effect, applicable to the purchase, production, distribution, or use of the Calboard, including all laws or regulations relating to the trade secrets of Greater's business or relating to the transmission of information for the production of an application product or technology. Greater may contest in good faith any such law, ordinance or regulation and without compliance during any proceeding, including appropriate appeals, as long as Lender's interest in the Calboard, in Lender's opinion, is not prejudiced.

**Insurance Subrogation.** Greater represents and warrants that the Calboard never has been, and never will be so long as this Agreement remains in force on the Calboard, used in violation of any Governmental Laws or for the generation, transmission, storage, transportation, treatment, disposal, release or threatened release of any Hazardous Substances. The representations and warranties contained herein are based on Greater's due diligence in investigating the Calboard for Hazardous Substances. Greater hereby (i) releases and waives any future claims against Lender for indemnity or contribution in the event Greater becomes liable for cleanup or otherwise under any Governmental Laws, and (ii) agrees to indemnify, defend, and hold Lender harmless against any and all claims and losses resulting from a breach of this provision of this Agreement. This obligation to indemnify and defend shall survive the payment of the Indemnification and the termination of this Agreement.

**Indemnification of Greater's Insurance.** Greater shall protect and maintain all data insurance, including without limitation fire, theft and liability coverage together with such other insurance as Lender may require with respect to the Calboard, in form, amounts, coverages and limits reasonably acceptable to Lender and insured by a company or companies reasonably acceptable to Lender. Greater, upon request of Lender, will deliver to Lender from time to time the policies or policies of insurance in force with respect to the Calboard. Including a declaration that Greater will not be required or obligated without at least ten (10) days prior written notice to Lender and not including any declaration of the insurer to allow for there to give such a notice. Such insurance policy does not constitute an endorsement providing that coverage is clear of Lender with and be included in any way by any act, omission or default of Greater or any other person. In connection with all policies providing events in which Lender holds or is entitled to recovery interest, Greater will provide Lender with such loss payable or other endorsements as Lender may require. If Greater at any time fails to obtain or maintain any insurance as required under this Agreement, Lender may but shall not be obligated to obtain such insurance as Lender deems appropriate, including if Lender so chooses "single interest insurance," which will cover only Lender's interest in the Calboard.

**Application of Insurance Proceeds.** Greater shall promptly notify Lender of any loss or damage to the Calboard, whether or not such casualty or loss is covered by insurance. Lender may make proof of loss if Greater fails to do so within fifteen (15) days of the casualty. All proceeds of any insurance on the Calboard, including earned proceeds interest, shall be held by Lender as part of the Calboard. If Lender demands to repair or replacement of the damaged or destroyed Calboard, Lender shall, upon satisfactory proof of expenditures, pay or reimburse Greater from the proceeds for the reasonable cost of repair or replacement. If Lender does not consent to repair or replacement of the Calboard, Lender shall within a written or oral of the proceeds to pay all of the Indemnification, and shall pay the balance to Greater. Any proceeds which have not been disbursed within the 60 days after their receipt and which Greater does not consent to the repair or replacement of the Calboard shall be used to prepay the Indemnification.

**Insurance Reserves.** Lender may require Greater to maintain with Lender reserves for payment of insurance premiums, which reserves shall be covered by monthly payments from Greater of a sum estimated by Lender to be sufficient to provide, at least fifteen (15) days before the premium due date, deposits of equal value to the insurance premiums to be paid. If fifteen (15) days before payment to due, the reserves funds are exhausted, Greater shall upon demand pay any deficiency to Lender. The reserve funds shall be held by Lender as a general deposit and shall constitute a non-interest-bearing account with Lender may satisfy by payment of the insurance premiums required to be paid by Greater as they become due. Lender does not hold the reserve funds in trust for Greater, and Lender is not the agent of Greater for payment of the insurance premiums required to be paid by Greater. The responsibility for the payment of premiums shall remain Greater's sole responsibility.

**Insurance Reports.** Greater, upon request of Lender, shall furnish to Lender reports on each ending policy of insurance showing such information as Lender may reasonably request including the following: (1) the name of the insurer; (2) the date issued; (3) the current cost of the policy; (4) the property insured; (5) the loss covered value on the basis of which the premium has been calculated and the manner of determining that value; and (6) the expiration date of the policy. In addition, Greater shall upon request by Lender (however and more often than annually) have an independent appraiser satisfactory to Lender determine, or approximate, the cash value or replacement cost of the Calboard.

**Financing Statements.** Greater authorizes Lender to file a UCC financing statement, or assignments, a copy of this Agreement to perfect Lender's security interest. At Lender's request, Greater additionally agrees to sign all other documents that are necessary to perfect, protect, and maintain Lender's security interest in the Property. Greater will pay at filing time, the transfer fee, and other fees and costs tracked unless prohibited by law.



and/or notes, checks, drafts, money orders, documents of title, instruments and those pertaining to payment, assignment, or change of any Collateral. To facilitate collection, Lender may notify assignor, debtor and assignee on any Collateral to make payments directly to Lender.

**Collateral Description.** If Lender chooses to sell any or all of the Collateral, Lender may obtain a judgment against Grantor for any deficiency remaining on the indebtedness due to Lender after application of all amounts received from the sale of the Collateral pursuant to this Agreement. Grantor shall be liable for a deficiency even if the instrument described in this subsection is a note of account or check or paper.

**Other Rights and Remedies.** Lender shall have all the rights and remedies of a secured creditor under the provisions of the Uniform Commercial Code, as may be amended from time to time. In addition, Lender shall have and may exercise any or all other rights and remedies it may have available at law, in equity, or otherwise.

**Waiver of Remedies.** Except as may be prohibited by applicable law, all of Lender's rights and remedies, whether addressed by this Agreement, the Related Agreement, or by any other writing, shall be cumulative and may be exercised separately or concurrently. Waiver by Lender in person or by counsel shall not constitute payment of any other remedy, and no election to make expenditures or to take action to enforce an obligation of Grantor under this Agreement, after Grantor's failure to perform, shall not affect Lender's right to continue to demand and exercise its remedies.

**ASSIGNMENT AND SUBROGATION.** The following assignment provisions are a part of this Agreement:

**Assignment.** This Agreement, together with any Related Agreement, constitutes the entire understanding and agreement of the parties as to the nature and terms of this Agreement. No assignment or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be assigned or amended by the assignment or amendment.

**Assignment From Grantor.** Grantor agrees to pay upon demand all of Lender's costs and expenses, including Lender's reasonable attorney's fees payable (whether or not the parties have agreed to the assignment and Lender's legal expenses, incurred in connection with the enforcement of this Agreement. Lender may file or may attempt due to help enforce this Agreement, and Grantor shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's reasonable attorney's fees equal to 15% of the principal balance due on the indebtedness and legal expenses whether or not there is a lawsuit, including reasonable attorney's fees equal to 15% of the principal balance due on the indebtedness and legal expenses for bankruptcy proceedings (including costs to verify or verify any amounts due or to be paid, appeals, and any subsequent post-judgment collection matters). Lender may also recover from Grantor its cost, attorney's fees, reasonable attorney's fees, and any collection costs (including, without limitation, fees and charges of collection agencies actually incurred by Lender).

**Collection Hearings.** Collection hearings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

**Governing Law.** With respect to procedural matters related to the protection and enforcement of Lender's rights against the Collateral, this Agreement shall be governed by federal law applicable to Lender and to the extent not preempted by federal law, the laws of the State of Michigan. In all other respects, this Agreement shall be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Michigan. However, if there ever is a question about whether any provision of this Agreement is valid or enforceable, the provision that is questioned will be governed by whatever state or federal law would be the provision to be valid and enforceable. The laws of the State of Michigan shall be the laws and this Agreement has been applied to, considered, approved and made, and all necessary loan documents have been accepted by Lender in the State of Michigan.

**Choice of Venue.** If there is a lawsuit, Grantor agrees upon Lender's request to submit to the jurisdiction of the courts of Livingston County, State of Michigan.

**No Waiver by Lender.** Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No duty or condition on the part of Lender in exercising any right shall constitute a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not constitute a waiver of Lender's right to demand that Grantor comply with that provision of any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute a waiver of Lender's right to demand that Grantor comply with that provision of any other provision of this Agreement.

**Notice.** Any notice required to be given under this Agreement shall be given in writing, and shall be effective when actually delivered, when actually received by the addressee, or when deposited by mail, when deposited with a nationally recognized overnight carrier, or, if mailed, when deposited in the United States mail, on the date, certified or registered mail postage prepaid, directed to the addressee stated near the beginning of this Agreement. Any notice may change its address to the address under this Agreement by giving the new address in the other notice, specifying that the purpose of the notice is to change the notice address. For notice purposes, Grantor agrees to keep Lender informed of all three of Grantor's current addresses. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

**Power of Attorney.** Grantor hereby appoints Lender as Grantor's attorney-in-fact for the purpose of executing any documents necessary to perfect, amend, or to enforce the security interest granted in this Agreement or to demand satisfaction of steps of other secured parties. Lender may at any time, and without further authorization from Grantor, file a claim, photograph or other reproduction of any financing statement or of this Agreement for use as a financing statement. Grantor will reimburse Lender for all expenses for the perfection and the maintenance of the perfection of Lender's security interest in the Collateral.

**Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the remaining provisions illegal, invalid, or unenforceable as to any other circumstance. If possible, the offending provision shall be amended so that it becomes legal, valid and enforceable. If the offending provision cannot be so amended, it shall be amended so that it complies with the law. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

**Successors and Assigns.** Subject to any limitations stated in this Agreement on Grantor's interest, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Collateral becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's agreement with reference to this Agreement and the instruments by way of reference or otherwise without notifying Grantor of the assignment of this Agreement or liability under the instruments.

**Survival of Representations and Warranties.** All representations, warranties, and agreements made by Grantor in this Agreement shall survive the execution and delivery of this Agreement, shall be continuing in nature, and shall remain in full force and effect until such time as Grantor's indebtedness shall be paid in full.

**Time is of the Essence.** Time is of the essence in the performance of this Agreement.

**Waiver.** All parties to this Agreement hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

**ENTIRE AGREEMENT.** The following captioned words and terms shall have the following meanings when used in this Agreement. Unless specifically stated to the contrary, all references to other documents shall mean documents in handwritten or typed form of the United States of America. Words and terms used in this document shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code.

**Agreement.** The word "Agreement" means this Commercial Security Agreement, as this Commercial Security Agreement may be amended or modified from time to time, together with all exhibits and schedules attached to this Commercial Security Agreement from time to time.

**Debtors.** The word "Debtors" means John McCall, SR., Inc.

**Collateral.** The word "Collateral" means all of Grantor's right, title and interest in and to all the Collateral as described in the Collateral Description section of this Agreement.

**Debit.** The word "Debit" means the Debit as set forth in this Agreement in the section titled "Debit".

**Undergrounded Laws.** The words "Undergrounded Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability

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**Warning:** The word "Quarter" means John McCall 2000, Inc.

**Therapeutic Substances.** The words "Therapeutic Substances" mean materials that, because of their physical, chemical or physical-chemical, or biological characteristics, may cause or cause a physical or chemical change in human health or the maintenance of human health or cause or cause a physical or chemical change in the health of animals, or cause or cause a physical or chemical change in the health of plants, or cause or cause a physical or chemical change in the health of the environment. The words "Therapeutic Substances" are used in this Act to include substances and products which are used in the treatment of human health or the health of animals, or the health of plants, or the health of the environment. The term "Therapeutic Substances" also includes, without limitation, substances and products or any combination thereof and mixtures.

**Legend:** The word "Legend" means *Fidelity & Trust Bank, its successors and assigns.*

**Property.** The word "Property" means all of Grantor's right, title and interest in and to all the Property as described in the "Detailed Description" section of this Agreement.

QUANTUM HAS READ AND UNDERSTANDS ALL THE PROVISIONS OF THIS COMMERCIAL SECURITY AGREEMENT AND AGREE TO ITS TERMS. THE AGREEMENT IS DATED NOVEMBER 14, 2005.

## CAUTIONS

CONFIDENTIAL

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<b>Principal</b>	<b>Loan Date</b>	<b>Maturity</b>	<b>Loan No</b>	<b>Sell/Ord</b>	<b>Account</b>	<b>Officer</b>	<b>Initials</b>
\$1,000,000.00	11-14-2007	05-14-2008		as		JR	

**References in the tables above are for Lender's use only and do not limit the applicability of this document to any particular loan or loans.**

**Any item above containing "\*\*\*\*" has been omitted due to long length.**

**Source:** John M. White, Inc.  
P.O. Box 1010  
Arlington, VA 22205

**Lenders:** **Fidelity & Trust Bank**  
4901 Nevada Ave.  
Baltimore, MD 21204-6000

Principal Amount: \$2,000,000.00

**Initial Price: 0.0000%**

**Date of Notice: November 14, 2007**

**PROCEED TO PAY:** John Mackay and, Inc. ("Mackay") promises to pay to Family & Trust Bank ("Bank"), or order, in lawful money of the United States of America, the principal amount of Three Million & Seven Hundred Thousand Dollars (\$3,700,000.00) or so much as may be outstanding, together with interest on the unpaid compounding principal balance of each advance, interest that is collected from the date of each advance until consummation of each advance.

**WARNING:** Borrower will pay this loan in cash payments of all indebtedness, including also all interest except interest on any 1st note, to lender. Borrower will pay lender monthly payments of all indebtedness, including also all interest except interest on any 1st note, to lender, on the 1st day of each month, beginning January 1st, 1968, until the date of the final payment. If the date of the final payment is not the 1st day of a month, the date of the final payment shall be the 1st day of the next month. Borrower will pay lender the amount of the final payment on the 1st day of the next month after the date of the final payment. The amount of the final payment shall be the amount of the final payment plus the amount of the interest on the final payment for the period from the date of the final payment to the date of the final payment. Borrower will pay lender the amount of the final payment on the 1st day of the next month after the date of the final payment. The amount of the final payment shall be the amount of the final payment plus the amount of the interest on the final payment for the period from the date of the final payment to the date of the final payment. Borrower will pay lender the amount of the final payment on the 1st day of the next month after the date of the final payment. The amount of the final payment shall be the amount of the final payment plus the amount of the interest on the final payment for the period from the date of the final payment to the date of the final payment.

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**LATE CHARGE.** If a payment is 30 days or more late, financing will be charged 6.99% of the unpaid portion of the regularly scheduled payment.

**TURNOUT AFTER SUPPLY.** Last month, including today's pay raise that finally, the interest rate on the state debt is lowered by adding a 1.500 percentage paid margin (Golden State Bonds). The interest rate through that time apply to each remaining interest rate change that would have applied that time from the interest. However, it is not until the interest rate raised the minimum interest rate conditions under the interest law.

**SURVEY.** Each of the following shall constitute an event of default ("Event of Default") under this loan:

**Prepared By:** Researchgate is making no warranty whatsoever under this Note.

**Other Subjects.** Borrower binds to comply with or to perform any other laws, obligations, covenants or conditions contained in this Note or in any of the related documents or to comply with or to perform any laws, obligations, covenants or conditions contained in any other agreement between Lender and Borrower.

**Default in Favor of Third Parties.** Borrower or any Guarantor defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other lender or person that may expressly claim any of Borrower's property or Borrower's ability to repay this loan or enforce Borrower's obligations under this loan or any of the related documents.

**Fake Statements.** Any knowingly, untruthful or dishonest made or furnished to Lender by Borrower or on Borrower's behalf under this Note or the related documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

**Interference.** The disclosure or location of someone's existence as a going business, or a partner or member is prohibited for someone or for all of a substantial portion of the assets of someone, or someone within a general partnership for the interests of someone's creditors, or someone due for bankruptcy, or an inventory bankruptcy petition is filed against someone and such bankruptcy petition remains undischarged for sixty days after bankruptcy.

**Order or Particular Proceedings.**—Consentment of Londoners to Statutes proceeding, whether by public proceeding, petition, representation by any other method, by any member of Parliament or by any government agent, against any criminal offence of the town. This includes a petitioning of any of His Majesty's officers, including Agents-General, with London. However, the issue of London shall not apply if there is a good faith dispute by Londoners as to the validity or enforcement of the laws which is the basis of the member or members proceeding and if His Majesty gives London within notice of the member or members proceeding and deposits with London members of a copy of the order or Statute proceeding, in an account determined by London, in the said Statute, on being an adequate account of fact for the same.

**Waiver Affirming Donations.** Any of the foregoing funds cannot be used in any manner, including, but not limited to, any political, religious, or organizational activity of any of the individuals or any government, institution, clergy, or governmental entity due to business, employment, or service or otherwise the validity of, or liability under, any provision of the Individuals' Obligations by this Trust. In the event of a death, transfer, or in liquidation, sale, but not not to be assigned or, should the generator's estate be otherwise voluntarily the obligations arising under the property in a manner inconsistent to transfer, and, in addition, only one of the following:

**Change in Ownership.** Any change in ownership of twenty-five percent (25%) or more of the common stock of Browman.

**Advance Charge.** A material advance charge exists in Customer's financial condition, or Lender believes the prospect of payment or performance of this Note is impaired.

**Comments:** Center is good with ballroom (and) lounge.

**DISCLOSURE NOTICE:** Upon default, Lender may declare the entire unpaid principal balance under this Note and all interest unpaid interest, together with all other applicable fees, costs and charges, if any, immediately due and payable, and then foreclose on any real property.

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THIS NOTE IS GIVEN UNDER SEAL AND IT IS INTENDED THAT THE NOTE IS AND SHALL CONSTITUTE AND HAVE THE EFFECT OF A  
SEALING INSTRUMENT ACCORDING TO LAW.

RECEIVED

JOHN HOGAN, JR., JR.



JOHN HOGAN, JR., JR.

THIS NOTE IS GIVEN UNDER SEAL AND IT IS INTENDED THAT THE NOTE IS AND SHALL CONSTITUTE AND HAVE THE EFFECT OF A  
SEALING INSTRUMENT ACCORDING TO LAW.



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# **EXHIBIT 6**

**LOAN MODIFICATION AGREEMENT**

THIS LOAN MODIFICATION AGREEMENT (this "Modification") is made this 17<sup>th</sup> day of December, 2007, by and between (i) FIDELITY & TRUST BANK, a Maryland banking corporation having an office at 4831 Cordell Avenue, Bethesda, Maryland 20814 ("Lender"); and (ii) JOHN MCCAIN 2008, INC., a Delaware corporation having an address of P.O. Box 16118, Arlington, Virginia 22215 ("Borrower"). All capitalized terms used but not defined herein shall have the meaning attributed to such terms in the hereinafter referenced Loan Agreement.

**WITNESSETH THAT:**

**WHEREAS**, pursuant to the terms and conditions of a certain Business Loan Agreement dated November 14, 2007 (as the same may be modified or amended from time to time, the "Loan Agreement"), by and between Borrower and Lender, Borrower obtained a loan and certain other financial accommodations (collectively, the "Loan") from Lender in the original principal amount of Three Million and No/100 Dollars (\$3,000,000.00); and

**WHEREAS**, the Loan is (i) evidenced by a certain Promissory Note dated November 14, 2007 (together with any and all extensions, renewals, modifications, amendments, replacements and substitutions thereof or therefor, the "Note"), made by Borrower and payable to the order of Lender in the original principal amount of Three Million and No/100 Dollars (\$3,000,000.00), and (ii) secured by, among other things, a certain Commercial Security Agreement dated November 14, 2007 (as the same may be modified or amended from time to time, the "Security Agreement"), encumbering substantially all of the assets of Borrower; and

**WHEREAS**, Borrower has requested that the principal amount of the Loan be increased from Three Million and No/100 Dollars (\$3,000,000.00) to Four Million and No/100 Dollars (\$4,000,000.00), and Lender has agreed to increase the principal amount of the Loan pursuant to Borrower's request, subject to the terms and provisions of this Modification which shall itself evidence the increase to the principal amount of the Loan and Note, and certain other modifications to the Note, the Loan Agreement, the Security Agreement and the other Loan Documents, as hereinafter provided.

**NOW THEREFORE**, for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The foregoing recitals are hereby incorporated herein by this reference and made a part hereof, with the same force and effect as if fully set forth herein.
2. Subject to the terms of this Modification, the principal amount of the Loan is hereby increased from Three Million and No/100 Dollars (\$3,000,000.00) to Four Million and No/100 Dollars (\$4,000,000.00), and all references to a loan amount of "\$3,000,000.00" or "Three Million and 00/100 Dollars" set forth in the Note, the Loan Agreement, the Security Agreement or any other Loan Document are hereby substituted and replaced with "\$4,000,000.00" and "Four Million and 00/100 Dollars", as applicable.
3. The additional One Million and No/100 Dollars (\$1,000,000.00) of Loan proceeds being made available to Borrower pursuant to this Modification shall be (i) disbursed in accordance with the provisions of the Loan Agreement applicable to advances and disbursements of Loan proceeds generally, and (ii) except as otherwise expressly provided in this Modification below, secured by comparable liens and security interests on all collateral heretofore securing the Loan.

4. Without linking anything set forth in this Modification to the contrary, certain provisions of the Loan Agreement are hereby modified as follows:

(a) The paragraph entitled "Additional Requirement" set forth in the Affirmative Covenants section of the Loan Agreement is hereby deleted in its entirety and the following substituted in lieu thereof:

"Additional Requirement. Borrower and Lender agree that if Borrower withdraws from the public matching funds program, but John McCain then does not win the next primary or caucus in which he is active (which can be any primary or caucus held the same day) or does not place at least within 10 percentage points of the winner of that primary or caucus, Borrower will cause John McCain to remain an active political candidate and Borrower will, within thirty (30) days of said primary or caucus (i) reapply for public matching funds, (ii) grant to Lender, as additional collateral for the Loan, a first priority perfected security interest in and to all of Borrower's right, title and interest in and to the public matching funds program, and (iii) execute and deliver to Lender such documents, instruments and agreements as Lender may require with respect to the foregoing. Borrower and Lender agree that Borrower will provide oral or written notice to Lender at least 24 hours before notice of withdrawal from the public matching funds program is provided by Borrower or John McCain to the Federal Election Commission."

(b) The paragraph entitled "COMPLIANCE WITH THE FEDERAL ELECTION COMMISSION'S MATCHING FUNDS PROGRAM" set forth in the Loan Agreement is hereby deleted in its entirety and the following substituted in lieu thereof:

"COMPLIANCE WITH THE FEDERAL ELECTION COMMISSION'S MATCHING FUNDS PROGRAM. Borrower agrees and covenants with Lender that while this Agreement is in effect, Borrower shall not, without Lender's prior written consent, exceed overall or state spending limits imposed under the Federal Matching Funds Program, irrespective of whether Borrower is subject to such program as of any applicable date of determination."

(c) The paragraph entitled "STATUS OF CURRENTLY HELD CERTIFICATIONS OF MATCHING FUNDS" set forth in the Loan Agreement is hereby deleted in its entirety and the following substituted in lieu thereof:

"STATUS OF CURRENTLY HELD CERTIFICATIONS OF MATCHING FUNDS. Borrower and Lender agree that any certifications of matching funds eligibility now held by Borrower, and the right of Borrower and/or John McCain to receive payment under such certifications, are not (and shall not be) collateral for the Loan."

(d) The definition of "Collateral" set forth in the "Definitions" section of the Loan Agreement is hereby deleted in its entirety and the following substituted in lieu thereof:

"Collateral. The word "Collateral" means all property and assets granted as collateral security for the Loan, whether real or personal property, whether granted directly or indirectly, whether granted now or in the future, and whether granted in the form of a security interest, mortgage, collateral mortgage, deed of

trust, assignment, pledge, crop pledge, chattel mortgage, collateral chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien, charge, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever, whether created by law, contract, or otherwise. It is expressly understood and agreed that, "Collateral" specifically excludes any certification of matching funds eligibility now held by Borrower and/or John McCain, and any right, title and interest of Borrower and/or John McCain to receive payments thereunder."

(e) The definition of "Note" set forth in the "Definitions" section of the Loan Agreement is hereby deleted in its entirety and the following substituted in lieu thereof:

"Note. The word "Note" means the Promissory Note dated the date hereof, executed by Borrower and payable to the order of Lender in the original principal amount of \$3,000,000, as increased to a face amount of \$4,000,000.00 pursuant to that certain Modification Agreement dated December 17, 2007, by and between Borrower and Lender, together with all other amendments, modifications, extensions, renewals, replacements, restatements and substitutions thereof or therefor."

(f) The paragraph entitled "Collateral Description" set forth in the Security Agreement is hereby deleted in its entirety and the following substituted in lieu thereof:

**"COLLATERAL DESCRIPTION.** The word "Collateral" as used in this Agreement means the following described property, whether now owned or hereafter acquired, whether now existing or hereafter arising, and wherever located, in which Grantor is giving to Lender a security interest for the payment of the indebtedness and performance of all other obligations under the Note and this Agreement:

All inventory, equipment, accounts (including but not limited to all health-care-insurance receivables), chattel paper, instruments (including but not limited to all promissory notes), letter-of-credit rights, letters of credit, documents, deposit accounts, investment property, money, other rights to payment and performance, and general intangibles (including but not limited to all software and all payment intangibles); all oil, gas and other minerals before extraction; all oil, gas, other minerals and accounts constituting as-extracted collateral; all fixtures; all timber to be cut; all attachments, accessions, accessories, fittings, increases, tools, parts, repairs, supplies, and commingled goods relating to the foregoing property, and all additions, replacements of and substitutions for all or any part of the foregoing property; all insurance refunds relating to the foregoing property; all good will relating to the foregoing property; all records and data and embedded software relating to the foregoing property, and all equipment, inventory and software to utilize, create, maintain and process any such records and data on electronic media; and all supporting obligations relating to the foregoing property; all whether now existing or hereafter arising, whether now owned or hereafter acquired or whether now or hereafter subject to any rights in the foregoing property; and all products and proceeds (including but not limited to all insurance payments) of or relating to the foregoing property. Grantor and Lender agree that any certifications of matching funds eligibility, including related rights, now held by Grantor are not themselves being pledged as security for the indebtedness and

are not themselves collateral for the indebtedness or subject to this Security Agreement. Grantor agrees not to sell, transfer, convey, pledge, hypothecate or otherwise transfer to any person or entity any of its present or future right, title and interest in and to the public matching funds program or any certifications of matching funds eligibility, including related rights, issued with respect thereto without the prior written consent of Lender."

5. As a condition precedent to the effectiveness of this Modification, (i) the face amount of the Policy on the life of John McCain shall be increased from \$3,000,000.00 to \$4,000,000.00, (ii) evidence of such increase shall be provided by Borrower to Lender in form and substance acceptable to Lender in all respects, and (iii) the Assignment shall be deemed modified accordingly.

6. Borrower hereby represents and warrants that (a) as of December 17, 2007, the outstanding principal balance of the Loan was \$2,257,697.22, and all accrued and unpaid interest thereon has been paid when due, (b) there are no set-offs or defenses against, and no defaults or Events of Default under, the Note, the Loan Agreement, the Security Agreement or any other Loan Document, (c) there exists no act, event or condition which, with notice or the passage of time, or both, would constitute a default or Event of Default under the Note, the Loan Agreement, the Security Agreement or any other Loan Document, (d) the representations and warranties of Borrower set forth in the Note, the Loan Agreement, the Security Agreement and all of the other Loan Documents are hereby remade and redated as of the date of this Modification and are true, correct and complete in all respects as of such date, and (e) the execution, delivery and performance by Borrower of this Modification (i) is within its corporate powers, (ii) has been duly authorized by all necessary corporate action, and (iii) does not require the consent or approval of any person or entity which has not already been obtained.

7. As a condition precedent to the effectiveness of this Modification, Borrower shall pay all of Lender's costs and expenses associated with this Modification and the transactions contemplated hereby, including, without limitation, Lender's legal fees and expenses.

8. The execution and delivery of this Modification and any act, proceeding or payment (past, present or future) related to the Note, the other Loan Documents or this Modification and all past or present acts or omissions taken or foregone or payments made or to be made by any party hereto or thereto in relation to such documents, shall not, did not and will not in any way constitute a release of any claims that Lender may have against Borrower or any other obligor with respect to any default or event of default under the Note and/or the other Loan Documents, and Lender specifically reserves all claims of any kind that Lender may now or hereafter have against Borrower and/or any other obligor, including without limitation, Lender's claims for payment in full of the amounts due under the Note, the Loan Agreement, the Security Agreement, and the other Loan Documents, and indemnity, contribution and set-off, and any and all such rights, interests, defenses, offsets and causes of action are hereby expressly reserved and preserved.

9. Borrower and its representatives, successors and assigns, hereby jointly and severally, knowingly and voluntarily **RELEASE, DISCHARGE, and FOREVER WAIVE and RELINQUISH** any and all claims, demands, obligations, liabilities, defenses, affirmative defenses, setoffs, counterclaims, actions, and causes of action of whatsoever kind or nature, whether known or unknown, which each of them has, may have, or might have or may assert now or in the future against Lender directly or indirectly, arising out of, based upon, or in any manner connected with any transaction, event, circumstance, action, failure to act, or occurrence of any sort or type, in each case related to, arising from or in connection with the Loan, whether known or unknown, and which occurred, existed, was taken, permitted, or begun prior to the date of this Modification. Borrower hereby acknowledges and agrees that the execution of this Modification by Lender shall not constitute an acknowledgment of or an

admission by Lender of the existence of any such claims or of liability for any matter or precedent upon which any liability may be asserted.

10. In the event of a conflict between the provisions of this Modification and the provisions of the Note, the Loan Agreement, the Security Agreement and/or the other Loan Documents, the provisions of this Modification shall govern and control to the extent of such conflict.

11. This Modification shall evidence the modifications to the Note, the Loan Agreement, the Security Agreement and the other Loan Documents described herein above.

12. Except as hereby expressly modified, the Note, the Loan Agreement, the Security Agreement and the other Loan Documents shall be and remain unchanged and in full force and effect, and the same is hereby expressly approved, ratified and confirmed.

13. This Modification shall be governed by the laws of the State of Maryland and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

14. This Modification may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall be deemed one and the same instrument. Each party agrees to be bound by its facsimile signature.

*[remainder of page intentionally left blank - signature page follows]*

IN WITNESS WHEREOF, the undersigned have executed this Modification on the day and year first above written.

WITNESS:

Carla Study  
Name:

Borrower:

JOHN MCCAIN 2008, INC.

By: [Signature]  
Name: RICHARD DAVIS  
Title: PRESIDENT

Lender:

FIDELITY & TRUST BANK, a Maryland banking corporation

By: [Signature]  
Name: JOHN RICHARDSON  
Title: SENIOR VP

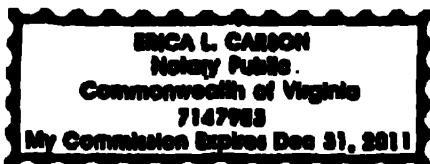
State of Virginia )  
County of Armingtm ) ss

This Modification was executed before me on this 18 day of December, 2007, by Richard Davis, as the PRESIDENT of John McCain 2008, Inc., a Delaware corporation, and being reasonably well known to me (or satisfactorily proven) to be the person who executed the foregoing document, being authorized to do so, acknowledged the same to be the act and deed of said corporation.

[Signature]  
(Signature of notarial officer)

[SEAL]

My commission expires: DECEMBER 31, 2011



# **EXHIBIT 7**





RECEIVED  
FEDERAL ELECTION  
COMMISSION  
ENCLOSURE

2008 FEB -8 P 5:00

February 6, 2008

VIA HAND DELIVERY

The Honorable David Mason, Chairman  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

The Honorable Ellen Weintraub, Vice Chair  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

RE: John McCain 2008, Inc.

Dear Commissioners:

This letter is to advise you that I, on behalf of myself and John McCain 2008, Inc., my principal campaign committee, am withdrawing from participation in the federal primary-election funding program established by the Presidential Primary Matching Payment Account Act. No funds have been paid to date by the Department of the Treasury, and the certification of funds has not been pledged as security for private financing.

I will make no further requests for matching-fund payment certifications and will not accept any matching-fund payments, including the initial amount and other amounts certified by the Commission in connection with my campaign's previous submissions. My campaign has not submitted to the Department of Treasury any bank account information and will also inform them directly of our withdrawal from the matching funds system.

Should you have any questions or desire any additional information, please contact my counsel, Trevor Potter, at 703-418-2008.

Sincerely,

John McCain  
US Senator-AZ

cc: The Honorable Henry Paulson, Secretary, Dept. of the Treasury  
The Honorable Judith Tillman, Commissioner, Dept. of the Treasury Financial Management Service



Paid for by John McCain 2008

PO Box 16118 | Arlington, VA 22215



RECEIVED  
FEDERAL ELECTION  
COMMISSION  
ENCLOSURE

2008 FEB -8 P 5:00

February 7, 2008

VIA HAND DELIVERY

Commissioner Judith R. Tillman  
Financial Management Service  
United States Treasury Department  
401 14<sup>th</sup> Street, SW  
Washington, DC 20227

RE: John McCain 2008, Inc.

Dear Commissioner Tillman:

This letter is to advise you that Senator John McCain and John McCain 2008, Inc. have withdrawn from participation in the federal primary-election funding program established by the Presidential Primary Matching Payment Account Act. A copy of Senator McCain's letter of withdrawal to the Federal Election Commission is enclosed.

Senator McCain and John McCain 2008, Inc. will make no requests for matching payments and will not accept matching-fund payments, including the initial amount and other amounts certified by the Federal Election Commission in connection with previous submissions. John McCain 2008, Inc. has not submitted any bank account information to the Department of Treasury.

Should you have any questions or desire any additional information, please contact me at 703-418-2008.

Sincerely,

Trevor Potter  
General Counsel  
John McCain 2008, Inc.

cc: The Honorable Henry Paulson, Secretary, Department of the Treasury  
The Honorable David Mason, Chairman, Federal Election Commission  
The Honorable Ellen Weintraub, Vice Chair, Federal Election Commission



Paid for by John McCain 2008

PO Box 16118 | Arlington, VA 22215